

Message Text

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ACTION EUR-12

INFO OCT-01 ISO-00 VO-05 CA-01 SCS-06 PPT-01 CIAE-00
DODE-00 PM-05 H-01 INR-07 L-03 NSAE-00 NSC-05
PA-01 PRS-01 SP-02 SS-15 USIA-06 IO-13 /085 W
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R 181105Z NOV 77
FM USMISSION USBERLIN
TO AMEMBASSY BONN
INFO SECSTATE WASHDC 5717
AMEMBASSY BERLIN
AMEMBASSY LONDON
AMEMBASSY MOSCOW
AMEMBASSY PARIS
USMISSION USNATO

C O N F I D E N T I A L SECTION 1 OF 2 USBERLIN 2962

E.O.11652: XGDS-1
TAGS: PGOV, AKB, BQG
SUBJECT: SOVIET PORTEST ON FRG VISA REQUIREMENT FOR TRANSIT
PASSENGERS

REF: USBERLIN 2648

SUMMARY: REFTEL REPORTED 11 OCTOBER SOVIET PROTEST ON SUBJECT
MATTER. SOVIETS ALSO PROTESTED ON 25 OCTOBER, AND RECEIVED ORAL
RESPONSE FROM CHAIRMAN POLAD. BERLIN MISSIONS ARE CONTINUING
TO RESEARCH QUESTION BUT NOW REQUIRE INFORMATION FROM FRG. ACTION
REQUESTED: THAT BONN GROUP REQUEST FRG REP PROVIDE US WITH FRG
LEGAL INTERPRETATION OF VERORDNUNG ZUR DURCHFUEHRUNG DES AUSLAEND-
ERGESEZTES WITH RESPECT TO ISSUES SPECIFIED IN PARAS 5 AND 6
THIS TEL. END SUMMARY.

1. REFTEL A REPORTED 11 OCTOBER SOVIET PROTEST TO CHAIRMAN
(BRITISH) POLAD OF REQUIREMENT THAT SOVIET NATIONAL OBTAIN FRG
TRANSIT VISA WHEN TRANSITTING FRG ENROUTE TO BERLIN. CASE INVOLVED
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SOVIET NATIONAL, KVITSINSKY (FORMERLY ATTACHED TO SOVIET
EMBASSY IN EAST BERLIN), WHO WAS FLYING FROM PARIS VIA
COLOGNE TO BERLIN. AT COLOGNE HE WAS TOLD THAT HE NEEDED
A TRANSIT VISA TO CONTINUE HIS TRIP SINCE HIS NEXT STOP
WAS BERLIN, AND FRG LAW REQUIRED A TRANSIT VISA OF PASSENGERS
TRANSITTING THE FRG IF THEY LANDED AT MORE THAN ONE AIR-
PORT IN THE FRG. SOVIETS ALSO PROTESTED REFERENCE TO

TEGEL AIRPORT AS AN AIRPORT OF THE FRG AND CONSTRUCTION OF BERLIN BY COLOGNE OFFICIAL AS CITY OF FRG. CHAIRMAN POLAD UNDERTOOK TO LOOK INTO MATTER. COMMENT. WE HAVE SUBSEQUENTLY LEARNED THAT APPLICABLE FRG REGULATION (WHICH HAS BEEN EXTENDED TO BERLIN) REFERS TO AREA OF APPLICATION (GELTUNGSBEREICH) OF THE LAW, AND NOT TO AIRPORTS OR CITIES OF THE FRG. END COMMENT.

2. ON 25 OCTOBER SOVIET EMBASSY OFFICERS TYUTYUNOV AND CHOROCHORDIN CALLED ON CHAIRMAN (BRITISH) POLAD TO LODGE ANOTHER PROTEST ON SUBJECT. THIS PROTEST RELATED TO THE TRAVEL OF A SOVIET PROFESSOR ZIMZ WHO WAS EN ROUTE FROM BERLIN VIA HAMBURG TO DENMARK. CONTENTS OF PROTEST WERE ESSENTIALLY THE SAME AS IN PREVIOUS CASE. MAIN DIFFERENCE WAS THAT ZIMZ WAS TRAVELLING FROM BERLIN WHEREAS KVITSINSKY HAD BEEN TRAVELING TO BERLIN. (WE ARE NOT REPEAT NOT CERTAIN HOW EITHER CASE CONCLUDED. WE ASSUME INDIVIDUALS DID NOT REPEAT NOT SECURE TRANSIT VISAS. PERHAPS FRG CAN ADVISE US IF THEY DID SECURE VISAS).

3. AT TIME OF SECOND PROTEST, CHAIRMAN POLAD WAS IN POSSESSION OF SOME INFORMATION ON LAW INVOLVED AND RESPONDED AS FOLLOWS:

(A) THE REGULATION, THE VERORDNUNG ZUR DURCHFUEHRUNG DES AUSLAENDERGESTETZES, WHICH HAD BEEN TAKEN OVER IN BERLIN IN THE NORMAL WAY, STATED QUITE CLEARLY THAT IN THE AREA OF APPLICATION
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(I.E. THE FRG AND BERLIN TOGETHER) A VISA WAS REQUIRED IF MORE THAN ONE TRANSIT STOP WAS MADE. THE BERLIN OFFICIAL HAD THEREFORE ACTED CORRECTLY IN INSISTING THAT TRANSIT STOPS AT BERLIN AND HAMBURG REQUIRED A VISA.

(B) THE REGULATION SPOKE OF THE AREA OF APPLICATION RATHER THAN THE FRG. TYUTYUNOV STATEMENT WAS IN THIS RESPECT INACCURATE, AND HIS CONTENTION THAT WEST BERLIN WAS BEING TREATED AS PART OF THE FRG FELL TO THE GROUND.

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(C) THE REMARKS OF THE PASSPORT CONTROL OFFICIAL ABOUT THE STATUS OF BERLIN SHOULD BE TREATED IN CONTEXT. THE OFFICIAL WAS DOUBTLESS MERELY SEEKING TO EXPLAIN THAT THE EFFECT OF THE REGULATION WAS TO INCLUDE TEGEL IN THE LIST OF AIRPORTS AFFECTED BY THE REGULATION. TYUTYUNOV WAS ASSURED ON BEHALF OF THE ALLIES THAT TEGEL RETAINED A SPECIAL STATUS UNDER ALLIED AND FRENCH CONTROL (AS HE WELL KNEW) AND THAT BERLIN'S STATUS REMAINED AS CONFIRMED BY THE QA AND COULD NOT BE AFFECTED BY ANYTHING A BERLIN OFFICIAL MIGHT HAVE SAID. WE WOULD CONSIDER ADVISING THE OFFICIALS CONCERNED TO AVOID IN FUTURE STATEMENTS WHICH MIGHT LEAD TO MISUNDERSTANDING.

(D) IT WAS UNFORTUNATE IF THE GERMAN EMBASSY IN MOSCOW HAD PROVIDED MISLEADING ADVICE ABOUT VISAS IN THIS INSTANCE BUT THE RUSSIANS SHOULD TAKE THIS UP WITH THE FRG NOT WITH THE ALLIES.

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4. BERLIN MISSIONS HAVE CONTINUED TO EXAMINE THE VERORDNUNG. ONE QUESTION WHICH IS BEING ADDRESSED IS WHETHER THE VERORDNUNG IS IN CONFLICT WITH ALLIED LEGISLATION WHICH IS IN FORCE IN BERLIN, IN PARTICULAR BK/O (67)7. BK/O (67)7 PROVIDES A SPECIAL PROCEDURE TO CERTAIN SOVIETS AND OTHER EASTERN EUROPEANS SO THAT THEY MAY ENTER AND RESIDE IN BERLIN WITHOUT A VISA. (THIS BK/O WAS ISSUED AT SENAT SUGGESTION TO ENCOURAGE SOVIETS ET AL TO VISIT BERLIN. SOVIET RELUCTANCE TO PERMIT ITS NATIONALS TO OBTAIN FRG

VISAS FOR ENTRY TO BERLIN RESULTED IN THE SENAT'S VIEW IN LOSS OF VALUABLE CONTACTS WITH CULTURAL, SCIENTIFIC ETC. EASTERN EUROPEAN PERSONAGES). BERLIN MISSIONS HAVE NOT YET COME TO A CONCLUSION ON THIS POINT AND WE BELEIVE THAT BEFORE WE CAN COMPLETE OUR STUDY, WE MUST HAVE AN OFFICIAL FRG INTERPRETAION OF THE VERORNUNG AS IT IS APPLIED IN CASES AFFECTING TRAVEL TO AND FROM BERLIN.

5. IN PARTICULAR BERLIN MISSIONS WOULD APPRECIATE AN FRG LEGAL OPINION WHETHER EITHER OF THE FOLLOWING EXAMPLES CONSTITUTE TWO TRANSIT STOPS WITHIN THE AREA OF APPLICATION FO THE LAW FOR THE PURPOSE OF ARTICLE 1(4) OF THE VERORDNUNG:

- A. A SOVIET CITIZEN LANDS AT SCHOENEFELD IN THE GDR, GOES BY ROAD TO TEGEL AND THEN TRANSITS HAMBURG EN ROUTE BY PLANE TO COPENHAGEN.
- B. THE SAME JOURNEY IN THE REVERSE DIRECTION.

6. WE WOULD ALSO APPRECIATE FRG LEGAL OPINION ON THESE POINTS:

- A. THER VERORDNUNG APPEARS TO DEAL ONLY WITH TRANSIT TRAVEL BY AIR.
- B. WITH RESPECT TO SOMEONE WHO HAS RESIDED IN BERLIN BY VIRTUE OF BK/O (67)7, (ONE CAN RESIDE IN BERLIN UP TO CONFIDENTIAL

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31 DAYS UNDER THAT BK/O), HOW CAN HIS PRESENCE IN BERLIN BE TREATED AS A "TRANIST" OF BERLIN?
C. HOW CAN HIS ARRIVAL IN BERLIN (WHICH WE ASSUME IS BY RAIL OR AUTO AND PROBABLY FROM EAST BERLIN) BE CONSTRUED AS TRAVEL BY AIR? DAVIS

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